

The Honorable Patricia L. Cohen  
United States Magistrate Judge  
Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street  
Saint Louis, MO 63102

**RE: Case: 4:20-mj-07180-SPM; United States v. Michael J. Avery**

Dear Judge Cohen:

Yesterday I read in the news the criminal complaint against Mr. Michael Avery and noticed that it contained a piece of factually inaccurate information of which I had first-hand knowledge. It is my desire to correct this inaccuracy for the Court.

Special Agent Monahan's Affidavit in Support quotes two Facebook posts he alleged were made by Mr. Avery that include the word "red" to describe protests. The affidavit then states, "The FBI assess level RED ACTION to be associated with a high level of violence."

Because "red action" is a term of art, I wanted to provide the Court with additional context.

I have likely attended hundreds of protests (often called "actions") in the St. Louis region over the past decade. I also have led numerous nonviolent direct action trainings, both in St. Louis and around the country, wherein I teach about the history and practice of nonviolent direct action and civil disobedience.

Mr. Avery is an acquaintance of mine, and I know that he has attended at least two nonviolent direct action trainings that I have presented in years past.

At every single nonviolent direct action training, the curriculum includes a describing of what I call "the color codes". These colors (green, yellow, and red) have been used across the country for many years and only have one meaning. The color codes describe the likelihood of arrest and the likelihood of violence from police officers.

To illustrate, the following is an exact quote from a power point presentation I have used for years in trainings:

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Green -- low (arrests not anticipated)

Yellow -- enhanced (potential for some arrests and/or excessive force anticipated)

Red -- high (many/indiscriminate arrests and/or brutality likely)

All in area subject to arrests, possibly physically traumatic, chemical agents and other less lethal weapons, potentially lethal weaponry. Do not wear contacts, be prepared if having asthma, don't go if pregnant.

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As you can see, when calling for a "red action," in the parlance of protestors, one is indicating that the attending protestors might face a heightened risk of arrest or police use of force, not that the protestors will be committing violence.

To be clear, it is not the case that the heightened risk of arrest or police use of force necessarily stem from protestors using threats of force or violence. Most instances of Gandhian civil disobedience are simultaneously nonviolent and "red" actions.

Historical examples of “red” actions include such things as 1965’s Selma to Montgomery marches and the Civil Rights Movement’s sit-ins to force the integration of Southern lunch counters. A modern example of a “red” action might be a small group of protestors who decide to sit down in a crosswalk to disrupt traffic while holding signs, all with the hope of bringing attention to their cause.

I hope that this explanation of the true meaning of the color code system has been helpful to the Court. I would not want Mr. Avery to be improperly confined based upon a misinterpretation of jargon. For that reason, Ms. Lisa Fithian and Mr. Jeff Ordower, two authoritative nonviolent direct action trainers, and I each decided to write letters outlining our own individual understandings of what the color codes mean. I hope submitting these letters was not improper.

Having known Mr. Avery for six years, I do not believe him to be violent in any way or toward anyone. He is not a danger to the community. If released or if his bond is reduced, I am confident that he will break no federal or state laws and he will diligently appear for court hearings. Mr. Avery has deep ties to St. Louis, including a young daughter, whom I have seen him lovingly care for many times. Thus, I respectfully request that Mr. Avery be released from confinement pending trial.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keith W. Rose', with a stylized flourish at the end.

Keith W. Rose

PowerShare Collective, co-founder